

Staff Summary Report

Council Meeting Date: 07/10/03

Agenda Item Number: 29

SUBJECT: Authorize the Mayor to enter into an Intergovernmental Agreement between the City of Tempe and Tempe School District No. 3

DOCUMENT NAME: 20030710cacc04 **TEMPE ELEMENTARY SCHOOL DISTRICT #3 (0109-11)**

SUPPORTING DOCS: Yes

COMMENTS: N/A

PREPARED BY: Andrew B. Ching, Assistant City Attorney (350-8360)

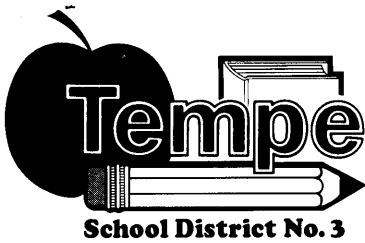
REVIEWED BY: Marlene A. Pontrelli, City Attorney (350-8120)

LEGAL REVIEW BY: N/A

FISCAL NOTE: Tempe receives a nominal fee for providing two-way radio communications to the District, this arrangement will continue under this renewal.

RECOMMENDATION: That the City Council authorize the Mayor to sign and approve the Intergovernmental Agreement.

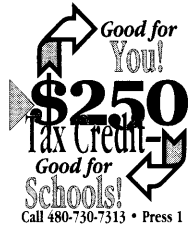
ADDITIONAL INFO: This is a renewal of an existing IGA, signed last year. All of the terms remain the same, with the exception of the length of the agreement, which is now for a term of 60 months, unless terminated sooner by either party. This IGA designates the Tempe Police Department as the "law enforcement unit" for Tempe Elementary School District #3 as required by the Federal Family Educational Rights and Privacy Act ("FERPA"). This allows Tempe and the District to share information about students, employees and others within the District to maintain safe schools. Additionally, the Agreement continues the existing Agreement for sharing of Tempe's two-way radio system by the District.



AN AFFIRMATIVE ACTION
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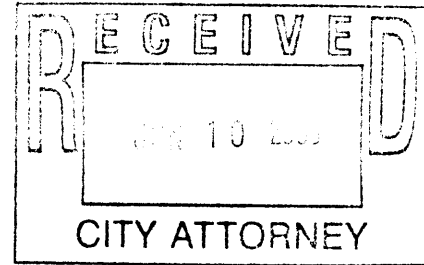
Phone (480) 730-7100 • FAX (480) 730-7177



June 9, 2003

Ms. Marlene Pontrelli
Tempe City Attorney
P.O. Box 5002
Tempe, AZ 85280

Subject: IGA Renewal



Dear Ms. Pontrelli:

Submitted for review and **approval as to form** only, please find the attached renewal IGA between the City of Tempe and Tempe School District #3. The current IGA expired in April after 12 months. The renewal of this IGA would commence with signature by the City and the District, and would continue for 60 months, unless sooner terminated by either party, as outlined in paragraph 5, page 5. All other terms (other than the length of the agreement) remain unchanged from the current year's IGA.

The IGA designates Tempe Police Department as the **"Official Law Enforcement Agency"** for Tempe School District #3 and specifies terms of agreement for use of the City's two-way radio system by Tempe School District #3. Designation of Tempe PD as the official law enforcement agency, as specified under the Family Educational Rights and Privacy Act, (FERPA), allows for limited release of student record information to Tempe Police, for appropriate investigative purposes. Without this designation, information and record exchanges may be prohibited.

Upon signature by yourself and our legal counsel, Ms. Janis Merrill, (480) 783-4009, the IGA must be approved by the City Council and the District Governing Board. I may be reached at (480) 861-1121. Thank you for your time and consideration.

Sincerely,

Paul M. Novak
Director of Transportation, Safety and Security

Governing Board

Mrs. Karen Arredondo

Steven C. Burns, M.D.

Mrs. Rose Crutcher

Mrs. Kimberly Gomez

Mr. Jim Lemmon

Dr. John M. Baracy, Superintendent

INTERGOVERNMENTAL AGREEMENT

Tempe School District No. 3
and
City of Tempe

The Agreement is made on the date written below by and between the Tempe School District No. 3 of Maricopa County ("District"), Arizona, and the City of Tempe, an Arizona municipal corporation, acting through its Police Department ("Department").

R E C I T A L S

- A. The District enrolls approximately 13,000 students in and adjacent to the city of Tempe and is committed by law and policy to offering a safe environment for these students, the employees of the District and its guests.
- B. The Department is the local law enforcement agency with jurisdiction within the city limits of the City of Tempe, which offers public safety services to the citizens of the City of Tempe.
- C. The District and the Department want to be able to share information promptly between designated representatives of each agency for public safety purposes, to reduce crime in the City of Tempe and at the schools of the District, and to provide a safe working and learning environment for the students and employees of the District.
- D. The Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g), its implementing regulations at 34 C.F.R. Part 99, and A.R.S. § 15-141, permit the District to establish a law enforcement unit, which may include a unit of commissioned police officers, officially authorized or designated by the District pursuant to 34 C.F.R. § 99.8.
- E. The District is authorized to enter into this Intergovernmental Agreement pursuant to A.R.S. §§ 15-141, 15-341 and 15-342. The Department is authorized to enter into this Agreement pursuant to A.R.S. § 9-240(B) 12. Both parties are authorized to enter into Intergovernmental Agreements pursuant to A.R.S. § 11-952.
- F. The District and the Department want to enter into this Intergovernmental Agreement to permit the Department to be designated the District's law enforcement unit for the sole purpose of facilitating the sharing of information in order to enhance the safety of the working and learning environment in the schools of the District.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

1. Designation of Law Enforcement Unit

The District officially authorizes and designates the Department as a “law enforcement unit” within the meaning of FERPA. As the District’s law enforcement unit, the Department may freely receive from and share with the District, information about students of the District, employees of the District and other persons with the District for the purposes of maintaining safe schools.

2. Duties of Law Enforcement Unit

The duty of the Department as a law enforcement unit is to enforce any local, state or federal law, or refer to appropriate authorities a matter for enforcement of any local, state or federal law against any individual or organization other than the District itself. In carrying out these duties, the Department agrees to:

- 2.1 Notify the Superintendent of the District (the “Superintendent”), or designee, of the name and address of any student arrested for crimes which may compromise community or school safety. Notification shall be given in a timely manner, and shall include the specific conduct which led to the arrest.
- 2.2 Upon request by the District, share summary criminal history information to the extent permissible under the requirements of the Arizona Criminal Justice Information System (ACJUS), with the Superintendent or his designee regarding juveniles who are students within the educational system for purposes of maintaining the security of persons and property.
- 2.3 Develop appropriate internal written policies to insure that confidential education record information is disseminated only to appropriate personnel.
- 2.4 Develop, in cooperation with the District, a written plan to determine the procedures to take when a child is identified as being truant from school.
- 2.5 Notify the Superintendent, or designee, of the name and address of any employee of the District, of which it is or becomes aware, who is charged with a felony or with a misdemeanor involving the abuse of a minor child or the sale or possession of a controlled substance. Notification shall be given in a timely manner after the Department learns that the person is an employee of the District, and shall include the specific act which led to the arrest.

3. Duties of the District

The Superintendent or designee(s) agrees to:

- 3.1 Notify, within 24 hours or the close of the next business day, the appropriate principal of juveniles arrest for crimes of violence or violation of law upon receipt of such information from the Department. The principal, within 24 hours of such notice, shall provide such information to the student's teachers and any other staff member on a need to know basis.
- 3.2 Designate the contact person(s) to be responsible for receiving juvenile arrest information and inform all parties as to the Superintendent's designee.
- 3.3 Request criminal history information only for the purposes of assessment, placement, or security of persons and property.
- 3.4 Designate in writing the contact person(s) to be responsible for receiving confidential criminal history information and inform all parties as to the names of those individuals.
- 3.5 Develop appropriate internal written policies to insure that confidential criminal history information is disseminated only to appropriate school personnel.
- 3.6 Develop a written plan, in cooperation with the Department to determine the procedures to take when a child is identified as being truant from school.
- 3.7 Notify the Department when an adult or student commits any of the following offenses on school property, on school sponsored transportation, or at school sponsored activities: homicide; sexual assault; sexual conduct with a minor under fifteen years of age; armed robbery, aggravated assault on a teacher or other school personnel; assault or aggravated assault on a student; kidnapping; arson; possession, use or sale of any firearm; possession, use or sale of any explosive device; possession, use or sale of any controlled substance; threatening or intimidating under A.R.S. § 13-202; theft; disorderly conduct, indecent exposure under A.R.S. § 13-1402; harassment under A.R.S. § 13-2917; or any other act that compromises school or community safety.

4. Agency Cooperation and Shared Information

- 4.1 The parties will develop procedures for ongoing meetings and will, at least quarterly, review the working relationship and recommend changes if warranted.

- 4.2 Neither party may release any information from the other, without permission of the other, except to parents, juvenile court officials, other juvenile enforcement officials, or others to the extent permitted or required by law. Such releases must be in compliance with State laws, Arizona Criminal Justice Information System rules, and both the District's and the Department's internal policies and procedures.
- 4.3 The District and the City want to be able to share two-way radio trunking and equipment maintenance services to help facilitate rapid, uninterrupted and common communication language and channels. The City will provide this service to the District for a nominal fee, subject to annual review by both agencies, (as specified below).

4.3.1. **General Terms**

City services will be as described below:

- | | |
|---|--------------------------------|
| a. Programming of District radios including inter-connectivity | n.c. |
| b. Establishment of between 5 and 10 talk groups as defined by the District | n.c. |
| c. Maintenance of 800mhz trunked system 2-4 site simulcast | n.c. |
| d. Weekly radio Check | n.c. |
| e. Routine equipment maintenance Quarterly or semi-annually | n.c. |
| f. Warranty and non-warranty repairs to District radio equipment | included in paragraph g. below |
| g. Trunked System Carrier Service Per radio/per month | \$12 |

4.3.2 **Maintenance and Repair**

- a. City will provide 24 hour a day, seven day a week service on the infrastructure of the system, and will provide equipment service and repairs during normal city business hours (7:00 a.m. to 4:30 p.m.).

damage or circumstances other than normal day-to-day wear and tear, will normally not be repaired under the terms set forth in this agreement. In such circumstances, the city or the District will return the equipment to the manufacturer. The District will pay the prevailing manufacturer's minimum service fee and a determination of cost-effectiveness for repair or replacement will be left up to the discretion of the District. Installation and removal of mobile equipment is not covered under this agreement. The District may use the City's contractor for such services, or may contract their own service.

5. Termination

This agreement may be terminated by either party upon thirty (30) days' written notice.

6. Employees; Responsibility

- 6.1 Employees of the respective parties shall not be considered employees or agents of the other, and the parties herein agree that they shall retain sole responsibility and authority over the respective employees.
- 6.2 To the extent permitted by Arizona law, neither Department nor its employees, shall be held liable for the damages due to incorrect performance including false arrest resulting from the failure of the District to submit appropriate data, or resulting from the submission of erroneous data or resulting from equipment failure.
- 6.3 To the extent permitted by Arizona law, neither District nor its employees, shall be held liable for the damages due to incorrect performance including false arrest resulting from the failure of the Department to submit appropriate data, or resulting from the submission of erroneous data, or resulting from equipment failure.
- 6.4 Each party agrees that it shall be liable for the acts, errors or omissions of its employees in discharging its obligations under this Agreement.

7. Conflict of Interest

The parties agree that this Agreement may be cancelled for conflict of interest in accordance with A.R.S. § 38-511.

8. Inspection of Records

All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection or audit by the District, the Department, or their agents during the term of this Agreement and for five (5) years after termination of this Agreement. Such records shall be produced at the offices of the party requesting them or such other reasonable location as is designated by the requesting party.

9. Notices

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Agreement shall be in writing and sent to the address given below for the party to be notified, or to such other address, notice of which is given in compliance with this section:

If to the Department:

City Manager
City of Tempe

If to the District:

Superintendent of Schools
Tempe School District No. 3
3250 S. Rural Road
Tempe, AZ 85281

10. Indemnification

To the extent permitted by law, each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

11. Insurance

- 11.1 The District shall maintain adequate insurance to cover any liability arising from the acts or omissions of the District's employees or agents arising out of the performance of this Agreement. The District shall not be responsible for maintaining insurance to cover liability arising from the acts or omissions of employees or agents of the Department.
- 11.2 The Department shall maintain adequate insurance to cover any liability arising from the acts or omissions of the Department's employees or agents arising out of performance of this Agreement. The Department

shall not be responsible for maintaining insurance to cover liability arising from the acts or omissions of employees or agents of the District.

12. Authority to Contract

Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder and has taken all required acts or actions necessary to authorize the same.

13. Effective Date and Term

The Agreement shall become effective upon adoption and signature by the parties and shall continue in force for sixty (60) months, unless sooner terminated as provided herein.

14. Integration; Modification

Each of the parties acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties except as expressed herein, and that this Agreement constitutes that parties' entire agreement with respect to the matters addressed herein. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby superseded and merged in this Agreement. This Agreement may be modified or amended only by written agreement executed by authorized representatives of both parties.

15. Waiver

No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision hereof, nor shall any waiver by either party by any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach hereunder.

16. Severability

In the event that a court of competent jurisdiction shall hold any part or provision of the Agreement void or of no effect, the remaining provisions of this Agreement shall remain in full force and effect, to the extent that the continued enforcement of such remaining terms shall continue to reflect substantially the intent of the parties hereto.

17. Mediation

If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to arbitration, if required under A.R.S. § 12-1518, to litigation or to some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for

Dispute Resolution, 366 Madison Avenue, New York, NY 1—17, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Maricopa County Superior Court. Each party agrees to bear its own costs in mediation. This mediation provision is not intended to constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

City of Tempe

Tempe School District No. 3

Kimberly Gomez, Governing Board
President

Attest:

Attest:

Approved as to form:

Approved as to form:

City Attorney

Janis Merrill, Attorney for the
Tempe School District No. 3

Date of Execution: _____